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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

**MAR - 1 1999**

**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY**

In the Matter of )  
)  
**Review of the Commission's** )  
**Broadcast and Cable** )  
**Equal Employment Opportunity** )  
**Rules and Policies and** )  
**Termination of the EEO Streamlining** )  
**Proceeding** )  
)

FCC 98-305

MM Docket No. 98-204

MM Docket No. 96-16

**COMMENTS OF THE**  
**ASSOCIATION OF AMERICA'S PUBLIC TELEVISION STATIONS.**

The Association of America's Public Television Stations ("APTS") hereby submits its comments in response to the Commission's *Notice of Proposed Rulemaking* ("NPRM") in the above-referenced proceeding, released on November 20, 1998. In this proceeding, the Commission proposes to modify its equal employment opportunity ("EEO") requirements to address constitutional issues raised by the Court of Appeals.<sup>1</sup>

APTS is a nonprofit organization whose members are licensees of virtually all of the nation's 353 local public television stations. APTS represents public television stations in legislative and policy matters before the Commission, Congress, and the Executive Branch, as well as engaging in planning and research activities on behalf of its members. As the representative of the nation's public television stations, APTS supports the Commission's efforts to eradicate employment discrimination of all forms and its continued efforts to increase the diversity of voices in the media.

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<sup>1</sup> See, Lutheran Church-Missouri Synod v. FCC, 141 F.3d 344 (D.C. Cir.), *rehearing en banc denied*, 154 F.3d 487 (D.C. Cir. 1998).

## **I. Background and Summary of FCC Proposals**

Recently, the United States Court of Appeals for the District of Columbia Circuit invalidated the Commission's equal employment opportunity rules.<sup>2</sup> In particular, the court found that the Commission's requirement that the racial, ethnic and gender composition of a station's workforce reflect the composition of the local labor force<sup>3</sup> amounted to an unconstitutional quota. However, the Court specifically recognized that the FCC might be able to adopt rules encouraging outreach programs targeted toward minority recruitment in a manner that was consistent with the equal protection provisions of the U.S. Constitution.<sup>4</sup>

In response to that decision, the Commission has proposed to amend its EEO rules in the following ways. First, it would require broadcasters to continue to submit minority and female employment information to enable the Commission to monitor industry trends, although this information will not be used to assess EEO compliance of individual stations.<sup>5</sup> Second, the Commission would require that broadcasters implement internal EEO reviews (including the review of hiring, retention and seniority practices), the effectiveness of which will be evaluated not only at renewal time but also during random audits.<sup>6</sup> Third, the Commission would require broadcasters to keep specific records on job vacancies; recruitment sources; advertisements and announcements of vacancies; and compilations totaling the race, ethnic origin, and gender of all applicants generated by

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<sup>2</sup> Id.

<sup>3</sup> Lutheran Church, 141 F.3d at 352, 154 F.3d at 492.

<sup>4</sup> Id.

<sup>5</sup> NPRM, ¶¶47-49.

<sup>6</sup> NPRM, ¶74.

each recruitment source according to vacancy.<sup>7</sup> Fourth, the Commission would require broadcasters to recruit for every vacancy, except those filled through internal promotion.<sup>8</sup> In this regard, the Commission seeks comment on three alternative proposals in terms of flexibility granted to stations in recruitment practices.<sup>9</sup> Lastly, the Commission proposes to reduce the EEO reporting and recordkeeping requirements for television stations in certain situations.<sup>10</sup>

## **II. Public Television Strives to Promote Diversity in Programming and to Assure Equal Employment Opportunities for All Qualified Applicants**

Section 396 of the Communications Act sets forth the congressional goal that public broadcasting stations offer “programming that involves creative risks and that addresses the needs of unserved and underserved audiences, particularly children and minorities.”<sup>11</sup> Keenly aware of this statutory charge, public television stations broadcast numerous programs reflecting the cultural, ethnic, and racial diversity of this country. In addition to their diverse programming practices, public television stations continually strive for racial and gender equity in their employment and promotion practices.

APTS fully supports the Commission’s effort to tailor its EEO rules to avoid the constitutional problems raised by the Court. Even though substantial progress has been made in the employment of minorities and women in the media, as Chairman Kennard has so eloquently stated, now is the time for “creativity, earnestness, new approaches and

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<sup>7</sup> NPRM, ¶73.

<sup>8</sup> NPRM, ¶67.

<sup>9</sup> NPRM, ¶64-66.

<sup>10</sup> NPRM, ¶¶84-87, 90.

<sup>11</sup> 47 U.S.C. § 396(a)(6).

a renewed commitment to do what it takes to continue to create opportunity in the media for minorities and women.”<sup>12</sup>

Accordingly, APTS supports not only the Commission’s efforts to adopt EEO rules that will withstand constitutional scrutiny, but also its proposal to employ a flexible approach to recruitment requirements. Additionally, APTS endorses the Commission’s proposals to reduce reporting and recordkeeping requirements for special classes of broadcasters. Specifically, APTS supports reduced requirements for smaller stations or stations licensed to smaller markets. APTS also urges the Commission to grant waivers or other appropriate forms of relief for institutional public television licensees, such as governmental and university licensees, which already must comply with recruiting and recordkeeping requirements of government-mandated or university-mandated EEO programs. Finally, APTS seeks Commission recognition of public television’s part-time, volunteer, and student internships in assessing the EEO practices of public television stations.

### **III. APTS Supports A Flexible Approach to Recruitment**

APTS supports a flexible approach to ensuring that stations recruit for job vacancies. Public television stations should be granted the discretion to determine how to recruit minorities and women so long as the stations can demonstrate that they have conscientiously and in good faith sought out a broad cross-section of qualified applicants. A one-size-fits-all recruitment method would certainly not be sensitive to the particular

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<sup>12</sup> William E. Kennard, “Mastering Opportunity,” Remarks before the National Black Media Coalition, December 2, 1998.

needs and resources of individual stations or their respective local communities, nor would it be sensitive to the realities of the composition of local labor forces.

Many public television stations employ staffs with little turnover in employment. To require a minimum number of recruitment sources or to require continuous recruitment when jobs are simply not available would impose unnecessary burdens on such stations and could give rise to expectations among potential applicants concerning jobs that might not be realistic. Further, different jobs call for different criteria in applicants and different recruitment strategies. Licensee discretion is necessary to determine the most effective recruitment process. For example, a licensee would not utilize the same recruitment practices for a top management position, where a nationwide search may be most beneficial, as compared to a clerical position, where a local or regional search would likely result in an ample pool of qualified applicants. Accordingly, APTS urges the Commission to give public television stations the flexibility to devise recruitment plans that meet their unique situations.

**A. The Proposal That Stations Maintain Comprehensive EEO Records on All Applicants Is Logistically Difficult**

APTS is concerned about the proposal to require stations to maintain compilations totaling the race, ethnic origin and gender of all applicants. Although public television stations maintain records on applicants and interviewees, compiling comprehensive records on all applicants is a difficult and time-consuming task. Few applicants voluntarily inform stations of their race or ethnicity. According to APTS member stations, mailing post cards to these applicants to collect information on race usually generates a limited response. Consequently, relying on the returned cards to measure the

racial, ethnic or gender make-up of the applicant pool may produce inaccurate results. As part of a flexible approach, APTS suggests that the Commission limit the requirement to cover interviewees rather than applicants. As an alternative, if the Commission adopts rules requiring more comprehensive record-keeping on the gender/race of applicants, APTS urges it to give full weight to a station's good faith efforts in maintaining such records when evaluating compliance with EEO standards.

**B. APTS Supports the Proposals to Recognize Alternative Recruitment Means and to Allow Joint Recruitment Efforts**

APTS supports the Commission's proposals that stations choosing to recruit directly for applicants at job-fairs or by local on-campus interviewing may be relieved of the burden of recruiting for every vacancy with minority- and female-specific recruitment sources. In many cases, such in-person, on-site recruiting may be a more effective and immediate way to attract candidates.

APTS also supports the Commission's proposal that credit be given to stations that engage in joint recruiting efforts. As the Commission recognizes,

By combining financial and personnel resources of other broadcasters or entities with resources for identifying qualified minority and female applicants, a broadcaster's administrative burdens in time and cost spent recruiting and keeping records will be substantially reduced while the effectiveness of its outreach will be increased.<sup>13</sup>

Allowing joint recruiting among stations will permit public television stations with limited resource to pool their resources and to craft effective outreach programs over a broader geographic area and over a longer time period than would otherwise be the case.

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<sup>13</sup> NPRM, ¶90.

Further, centralized recruitment may result in a more diverse array of recruitment sources than an individual station could amass.

**IV. APTS Urges the Commission to Waive Its EEO Requirements for Institutional Public Stations That Must Comply with Government- or University-Mandated EEO Programs**

Nearly two-thirds of public television stations are affiliated with either local or state governmental entities or universities. These stations already must comply with complex and rigorous EEO compliance programs administered by local, state, or university officials – programs that are also frequently subject to review by other agencies of the federal government. These EEO programs require exhaustive recruiting, recordkeeping, and reporting procedures. To require an additional set of federal recruiting, recordkeeping, and reporting measures on top of government or university requirements is both unnecessary and financially burdensome. Accordingly, APTS suggests that the Commission consider waiving its EEO rules where stations already follow substantially similar or more stringent EEO rules as part of their affiliation with a local or state government or university.

**V. APTS Supports the Commission's Proposals to Reduce EEO Reporting and Recordkeeping Requirements for Small Stations**

APTS supports the Commission's proposal to reduce the EEO reporting and recordkeeping requirements for small stations or stations that operate in small markets. This proposal would fairly balance the need for gender and racial equity against the practical everyday requirements of station operations.

Public television stations are noncommercial enterprises that must struggle to conserve their resources in an era of diminished funding. Approximately thirty percent of

noncommercial stations are small stations with operating budgets under \$3,000,000.

Approximately thirty-five percent serve markets smaller than the top 100 markets. Small stations and those in small markets often have the fewest funding options and must face difficult choices on a daily basis concerning how to deploy their limited resources effectively. Further, noncommercial stations in general, and these stations in particular, often have difficulty attracting and retaining qualified minority employees because they must compete with commercial stations that can offer higher salaries. Thus, any regulatory reforms that would assist small noncommercial stations in achieving EEO goals more effectively and more efficiently would certainly be welcome.

**VI. APTS Requests that the Commission Give Credit for Internships, Training Programs and Part-time Employees**


APTS requests that the Commission consider not only a licensee's recruitment procedures and self-assessment of those procedures, but also other programs in which the licensee participates that improve the training of, and expand the employment opportunities available to, minorities and women. In this regard, APTS notes that many noncommercial stations licensed to universities have a substantial number of student interns, including minority and women students. These internship-training programs allow students to gain valuable, hands-on experience in television and radio station operations. As such, these internship programs could have a very positive long-term effect on the employment prospects of women and minorities in the broadcast industry. Thus, these programs, as well as recruitment of full-time employees, should be considered when the Commission evaluates a station's EEO practices.

APTS also urges the Commission to consider part-time positions when it assesses the adequacy of the recruitment efforts. Often public television licensees rely heavily upon employees working part-time to operate their stations. Failure to acknowledge those employees gives an inaccurate picture of the licensee's EEO efforts. For these reasons, APTS suggests that the Commission should include in the station's EEO assessment acknowledgement of all paid part-time employees.

### Conclusion

Public television whole-heartedly supports the Commission's continuing efforts to ensure equal employment opportunity and diversity in broadcasting. For the foregoing reasons, APTS supports a flexible approach to EEO recruitment requirements, including reduced reporting and recordkeeping requirements for small stations and waivers for university and government affiliated public television stations.

Respectfully submitted,

  
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